

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BANK OF AMERICA, N.A.,

Plaintiff,

-against-

APOLLO ENTERPRISE SOLUTIONS, LLC, APOLLO  
ENTERPRISE SOLUTIONS, INC., and MORIAH  
PARTNERS, LLC,

Defendants.

Civ. Action No.: 10-5707 (DLC)

**PLAINTIFF BANK OF AMERICA N.A.'S DIRECT TESTIMONY  
DEPOSITION DESIGNATIONS OF G. CHRISTOPHER IMREY**

Pursuant to the Court's August 27, 2010 Order, plaintiff Bank of America, N.A., ("Bank of America" or the "Bank") respectfully submits the following deposition testimony it offers as substantive evidence in the hearing on its motion for a preliminary injunction scheduled for October 14, 2010. The Bank intends to offer the deposition testimony of Mr. G. Christopher Imrey, who is a representative of the defendants Apollo Enterprise Solutions, LLC and Apollo Enterprise Solutions, Inc. (collectively, "Apollo"). A brief synopsis, with citation to the deposition transcript, for the testimony of Mr. Imrey is as follows (with a copy of relevant deposition transcripts in the schedules submitted herewith).

**SYNOPSIS OF DEPOSITION DESIGNATION OF G. CHRISTOPHER IMREY**

Excerpts of the Transcript of the Deposition of G. Christopher Imrey, dated September 23, 2010 ("Imrey Depo.") are attached hereto as Schedule A.

Mr. Imrey will testify about the negotiation of the Agreement, and the course of performance of the Agreement between Bank of America and Apollo between April 2006 and November 2009. Mr. Imrey's testimony will specifically explain Apollo Enterprise Solutions'

"IDS Pay", "IDS Collect" and "IDS Recover" tools and how these tools comprise the "Apollo IDS Self-Settlement" product as negotiated in the Agreement. Mr. Imrey's testimony will also establish Apollo Enterprise Solutions' billing practices and how invoices to Bank of America were calculated from the beginning of the contractual relationship, through discussions for renegotiation of pricing arrangements, and also the new methods used by Apollo after the investment by Moriah to calculate "revised" invoices to Bank of America. Specifically:

- he is the founder and Chief Strategic Officer of Apollo and, prior to 2009, Apollo did not believe that the Agreement permitted Apollo to invoice the Bank for use of Apollo's services based upon "web hits." Imrey Depo. at 83:7-84:10. Mr. Imrey and his company were unaware that the Agreement could be interpreted to allow Apollo to charge the Bank based on web hits. (Imrey Depo. at 10:17-11:19; 20:16-22:14; 26:2-5; 83:7-84:19.)
- That Schedule C to the Agreement, wherein Apollo claims its right to invoice based on the number of "web hits"—was actually drafted by Apollo. (*Id.* at 37:12-39:17.)
- That Mr. Imrey identified Mr. Evan Pinchuk as the Apollo representative who reviewed the contract to determine if the Bank was in compliance (88:17-22), which is when Apollo allegedly discovered the clause referring to 170,000 web hits (84:11-84:19).
- Moriah conducted an audit of the Bank's Agreement and other customers' contracts as a part of its takeover (*Id.* at 83:7-15, 84:4-19; 88:6 - 91:2.) The audit was conducted at the direction of Apollo's new management team from Moriah. (*Id.*; Pinchuk Depo. at 88:17-22.)
- It was only when Evan Pinchuk, who came in with the Moriah management, audited the Agreement that the new interpretation of web hits was "discovered." (Imrey Depo. at 84:11-19; 88: 17-22.)
- Mr. Imrey agrees that IDS Pay is intended to be used by current customers. (Imrey Depo. at 45:2-7.)
- Mr. Imrey explained in his deposition that Bank of America has been charged six cents a web hit for web hits over 170,000 but that calculation is not supported by the Agreement. (Imrey Depo. at 84:20-85:15)
- Mr. Imrey confirmed at his deposition that Apollo's contracts were made available to Moriah to review for due diligence purposes prior to Moriah's investment and Mr. Pinchuk agreed. (Imrey Depo. at 88:6-89:4; Pinchuk Depo. at 31:7-33:9.)
- The definition ostensibly relied upon is no longer available on Wikipedia. (Imrey Depo. at 81:19-25).

**DESIGNATIONS OF THE SEPTEMBER 23, 2010  
DEPOSITION TESTIMONY OF MR. G. CHRISTOPHER IMREY**

TESTIMONY FROM	TO
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Dated: New York, New York  
September 30, 2010

HOLLAND & KNIGHT LLP

By: /s Richard Raysman

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# SCHEDULE A

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK  
2 Civil Action No. 10-5707 (DLC)

3 -----x  
3 BANK OF AMERICA, N.A.,  
4 Plaintiff,

4 -vs-

5 APOLLO ENTERPRISE SOLUTIONS, LLC,  
6 APOLLO ENTERPRISE SOLUTIONS, INC.,  
7 and MORIAH PARTNERS, LLC,  
7 Defendants.

8 -----x  
8 Videotape deposition of G.

9 CHRISTOPHER IMREY, taken by the  
10 Plaintiff, at the law office of  
11 Whatley Drake & Kallas, LLC, 1540  
12 Broadway, New York, New York, on  
13 September 23, 2010, at 10:13 a.m.,  
14 before Robert M. Levine, a Shorthand  
15 Reporter and Notary Public of the  
16 State of New York.

17

18

19

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1 A P P E A R A N C E S :

2

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10

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12 Attorneys for Defendants

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14 New York, New York 10036

15 Attorneys for Defendant

16 BY: DEBORAH CLARK-WEINTRAUB, ESQ.,

17 DANIEL P. GLEASON, ESQ.

18 (212) 447-7070

19 [dweintraub@wdklaw.com](mailto:dweintraub@wdklaw.com)

20

21 ALSO PRESENT:

22 JOE BARRION, Videographer

23

24

25

11 IT IS FURTHER STIPULATED AND  
12 AGREED that all objections except as to form,  
13 are reserved to the time of trial.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 G. Christopher Imrey - September 23, 2010

2 THE VIDEOGRAPHER: This is the  
3 video operator speaking, Joe Barrion, of  
4 Rosenberg & Associates, 575 Madison Avenue,  
5 New York, New York.

6 Today's date is September 23,  
7 2010. The time on the video monitor is  
8 10:13. We are here at the office of Whatley  
9 Drake & Kallas, located at 1540 Broadway,  
10 New York, New York, to take the videotaped  
11 deposition of Christopher Imrey in the matter  
12 of Bank of America, N.A. versus Apollo  
13 Enterprise Solutions, LLC; Apollo Enterprise  
14 Solutions, Inc.; and Moriah Partners, LLC, in  
15 the United States District Court for the  
16 Southern District of New York. Civil action  
17 No. 10-5707 (DLC).

18 Will counsel please identify  
19 yourselves and state whom you represent.

20 MS. MORRIS: Francesca Morris of  
21 Holland & Knight LLP for plaintiff Bank of  
22 America, N.A..

23 MS. CLARK-WEINTRAUB: Deborah  
24 Clark-Weintaub from Whatley Drake & Kallas  
25 for the defendants.

1 G. Christopher Imrey - September 23, 2010

2 THE VIDEOGRAPHER: Will the court  
3 reporter please swear in the witness.

4 G. C H R I S T O P H E R I M R E Y, being  
5 first duly sworn by the Notary Public (Robert  
6 M. Levine), testified as follows:

7 THE REPORTER: Full name and  
8 address for the record.

9 THE WITNESS: G. Christopher  
10 Imrey, 3009 Rivoli, Newport Beach, California  
11 92663.

12 EXAMINATION BY MS. MORRIS:

1 G. Christopher Imrey - September 23, 2010

10 Q. You are the founder of Apollo  
11 Enterprise, LLC?

12 A. Apollo Enterprise Solutions, LLC.

13 Q. When was that founded?

14 A. In January of 2003.

15 Q. And what was the capitalization at that  
16 time?

17 A. I put the first million dollars in  
18 myself. And then investor money.

19 Q. What was your ownership of Apollo  
20 Enterprise Solutions, LLC?

21 A. At its founding I owned 100 percent.

22 Q. And --

23 A. And --

24 Q. Sorry. Go ahead.

25 A. At the time it was sold, what was your

1                   G. Christopher Imrey - September 23, 2010  
2 percentage?

3                   A. I don't understand the question.

4                   Q. So what is the ownership of Apollo  
5 Enterprise Solutions, Inc.?

6                   A. I can't give you a detailed description  
7 of the cap. I don't know.

8                   Q. What's your position in Apollo  
9 Enterprise, Inc.?

10                  A. I am founder and chief strategy  
11 officer.

12                  Q. Do you have any ownership?

13                  A. Yes.

14                  Q. How much is your ownership?

15                  A. It's depending upon incentives and  
16 bonuses. It varies.

17                  Q. Do you own any shares in the company?

18                  A. Yes.

19                  Q. How many shares do you own?

20                  A. About 25 million.

21                  Q. How many shares are there?

22                  A. I couldn't tell you the exact figure.

1 G. Christopher Imrey - September 23, 2010

21 Q. Apollo Enterprise entered into a  
22 contract with Bank of America?

23 A. No.

24 Q. What was the arrangement with Bank of  
25 America?

1 G. Christopher Imrey - September 23, 2010

2 A. Apollo Enterprise Solutions, not Apollo  
3 Enterprise entered into a contract with Bank of  
4 America.

5 Q. What is Apollo Enterprise?

6 A. I don't know. You were the one who  
7 referenced it.

8 Q. Well, when I meant Apollo Enterprise  
9 Solutions, AES entered into a contract with Bank of  
10 America. When was that?

11 A. It was in April 2006.

12 Q. How did that relationship come about?

13 A. I don't understand the question.

14 Q. Did you first contact Bank of America  
15 regarding providing online services for them?

16 A. No.

17 Q. Did someone at Bank of America contact  
18 Apollo Enterprise Solutions regarding providing  
19 services for Bank of America?

20 A. I don't know.

21 Q. Who would know?

22 A. Our senior VP of sales.

23 Q. Who is that?

24 A. Ed Dewispelare.

25 Q. Is he still with Apollo Enterprise

1                   G. Christopher Imrey - September 23, 2010  
2 Solutions?

3                   A.        No.

4                   Q.        At what time did you first have contact  
5 with Bank of America?

6                   A.        Ed called me and said that Bank of  
7 America reached out to him looking for a Web-based  
8 collection solution. And had set up a meeting with  
9 Julie Gonzales in Phoenix in 2005.

10                  Q.        Do you remember when in 2005 that was?

11                  A.        October 2005.

12                  Q.        Did you go to a meeting in Phoenix?

13                  A.        Yes.

14                  Q.        What happened at the meeting in  
15 Phoenix?

16                  A.        We presented our solution.

17                  Q.        What was the solution?

18                  A.        A Web-based collection application that  
19 provided multi-channel services.

20                  Q.        What services did it provide?

21                  A.        I just described it.

22                  Q.        What were the multi-services that were  
23 provided?

24                  A.        The ability to contact debtors or  
25 customers via IVR letters, E-mail, text, et cetera.

1 G. Christopher Imrey - September 23, 2010

2 Q. When you say the ability to contact,  
3 the online service sends out that contact?

4 A. The system has, yes. The system can do  
5 it.

6 Q. Does the system do that for Bank of  
7 America?

8 A. No.

9 Q. What other multi-services were  
10 presented at that meeting in October 2005?

11 A. Real-time decisioning. Credit bureau  
12 retrieval. And parsing, scoring. Decisioning.

13 Q. The real-time decisioning, what does  
14 that involve?

15 A. It involves the real-time decision  
16 engine that is incorporated to the software. That  
17 presents the offers and the work flow and the look  
18 and feel of the Web site to the customer.

19 Q. How is the decision reached before it's  
20 presented to the customer?

21 A. It's calculated based on a set of  
22 rules.

23 Q. Where do the rules come from?

24 A. They are configured in the system and  
25 programmed by engineers.

1 G. Christopher Imrey - September 23, 2010

2 Q. Who provides the parameters of those  
3 programs?

4 A. Depends. In the case of Bank of  
5 America it was all Bank of America's specifications.

6 Q. Does the Bank of America site contain  
7 real-time decision-making?

8 A. Yes.

9 Q. And all of the parameters for that come  
10 from Bank of America?

11 A. Yes.

12 Q. You mentioned also the credit bureau  
13 facility.

14 What is that?

15 A. The system's ability to retrieve  
16 information from the credit bureaus or any third  
17 party entity and parse that information and  
18 incorporate it into the decision process and/or the  
19 work flow.

20 Q. For Bank of America is that facility  
21 used?

22 A. Yes.

23 Q. In what way is it used?

24 A. When a customer logs in, Bank of  
25 America customer, the system will retrieve an

1                   G. Christopher Imrey - September 23, 2010  
2 authentication score from Experian. And if the  
3 score is above a certain threshold, then the  
4 customer is authenticated and allowed into the  
5 system.

6                   Q.        What happens if it's below a certain  
7 threshold?

8                   A.        The customer is not allowed access to  
9 the system.

10                  Q.        What's the purpose of that?

11                  A.        For multi-factor authentication.

12                  Q.        For multi?

13                  A.        Multi-factor authentication.

14                  Q.        Multi-factor. What are the other  
15 factors?

16                  A.        I don't understand the question.

17                  Q.        You said it's for multi-factor  
18 authentication.

19                  A.        Yes.

20                  Q.        Explain what multi-factor means?

21                  A.        It's what you have and what you know.  
22 An example of multi-factoring. So you have to have  
23 more than one level of authentication.

24                  Q.        What other levels of authentication are  
25 there?

1 G. Christopher Imrey - September 23, 2010

2 A. Single factor identification.

3 Q. What does that involve?

4 A. One element of authentication.

5 Q. In the case of Bank of America does it  
6 use single factor authentication?

7 A. No.

8 Q. Bank of America uses multi-factor  
9 authentication?

10 A. Yes.

11 Q. One of those factors is through the  
12 Experian credit bureau; is that right?

13 A. No.

14 Q. What are the factors that Bank of  
15 America uses for authentication?

16 A. What you have, which is your card  
17 number, and what you know, which is your Social  
18 Security number and your street address and your  
19 name.

20 Q. And each of those elements is put in in  
21 order to authenticate a customer?

22 A. Yes. Along with the zip code, I  
23 believe.

24 Q. And the Web site itself accesses  
25 Experian. And only let's them in if they have a

1                   G. Christopher Imrey - September 23, 2010  
2 credit score above a certain number?

3                   A.        No.

4                   Q.        What's the Experian part of it then?

5                   A.        It sends the what you know information  
6 to Experian. And if it matches and passes an  
7 authentication score, then you're allowed into the  
8 system.

9                   Q.        Then authentication score is actually  
10 where the information provided agrees with the  
11 information that Experian had; is that correct?

12                  A.        That's correct.

13                  Q.        What other of the multi-factors? Is  
14 that all of it? All of it is just information  
15 provided and then matched up against Experian?

16                  A.        Yes.

17                  Q.        And that's for --

18                  A.        An account number matched up against  
19 the bank's information.

1 G. Christopher Imrey - September 23, 2010

2 Q. Have you dealt with the Dealer  
3 Financial Services people?

4 A. I don't understand the question.

5 Q. Do you know Betsy Williams?

6 A. Yes.

7 Q. Do you know that she works for Dealer  
8 Financial Services?

9 A. Yes.

10 Q. Do you know Blesita Tanovitch?

11 A. Yes.

12 Q. Do you know she works for Dealer  
13 Financial Services?

14 A. Yes.

15 Q. Do you speak with them about the use of  
16 Dealer Financial Services' Web site?

17 A. I'm sorry. I don't understand the  
18 question.

19 Q. Do you speak with Blesita Tanovitch and  
20 Betsy Williams?

21 A. I don't understand the question.

22 Q. Do you understand what "speak" means?

23 A. Yes.

24 Q. So using the telephone, do you pick it  
25 up and talk to Betsy Williams?

1 G. Christopher Imrey - September 23, 2010

2 Have you done that?

3 A. I don't know what reference period.

4 Today? No.

5 Q. Ever.

8 A. Right. Maybe it's the English versus  
9 American phrase. Have I ever? I didn't understand  
10 the question. What are you trying to ask? Have I  
11 ever spoken to them?

14 A. Or do I speak with them regularly?

15 Q. Have you ever?

16 A. Or do I have monthly conference calls  
17 with them. Or, I mean -- I don't understand the  
18 question.

19 Q. Apollo Solutions does have conference  
20 calls with the Bank of America people regarding the  
21 use of the Web site regularly?

22 A. No.

23 Q. It does not have Friday conference  
24 calls with people at Bank of America to discuss the  
25 use of the Web site?

1 G. Christopher Imrey - September 23, 2010

2 A. No.

3 Q. Am I using the wrong name?

4 Is it because I didn't say Apollo  
5 Enterprise Solutions?

6 A. Yes.

7 Q. Apollo Enterprise Solutions has regular  
8 telephone calls every Friday to discuss the use of  
9 the Web site?

10 A. I believe so.

11 Q. Were you ever involved in those  
12 telephone calls?

13 A. No.

14 Q. You're not involved in them now?

15 A. No.

16 Q. Have you ever met with Betsy Williams  
17 of Dealer Financial Services?

18 A. Yes.

19 Q. Have you ever met with Blesita  
20 Tanovitch of Dealer Financial Services?

21 A. Yes.

22 Q. Do you know that Dealer Financial  
23 Services uses My Easy Payment Web site?

24 A. Yes.

25 Q. Do you know how customers are

1                   G. Christopher Imrey - September 23, 2010  
2                   authenticated for Dealer Financial Services' use of  
3                   the My Easy Payment Web site?

4                   A.        No.

5                   Q.        Do you know if there are other  
6                   departments that use the My Easy Payments Web site?

7                   A.        Currently?

8                   Q.        Currently.

9                   A.        No.

10                  Q.        No, you don't know?

11                  A.        I don't understand the question.

12                  Q.        You said no. But does that mean, no,  
13                  you don't know; or, no, nobody else uses the Web  
14                  site?

15                  A.        No, I don't know.

16                  Q.        What else was discussed at the October  
17                  2005 meeting?

18                  A.        Their existing solution.

19                  Q.        What were you told about that?

20                  A.        That it was a Web-based collections  
21                  portal. That it was very inflexible and hard-coded.  
22                  And that our design architecture and solution were  
23                  not hard-coded. And were configurable. And one  
24                  could program in rules and decision elements very,  
25                  very easily. And so Bank of America could control

1                   G. Christopher Imrey - September 23, 2010  
2 that process. So they became very excited about  
3 working with Apollo.

4                   Q. Who was at that meeting?

5                   A. Julie Gonzales and Ed Dewispelare.

6                   Q. And you?

7                   A. And me.

8                   Q. Just the three of you?

9                   A. Hmm-hmm.

10                  Q. Was anything else discussed at that  
11 meeting?

12                  A. I don't recall.

13                  Q. Was pricing discussed at that meeting?

14                  A. No.

15                  Q. Was there a discussion at that meeting  
16 about which customers would use the Web site?

1                   G. Christopher Imrey - September 23, 2010

15                  Q.        I'm going to show you a document that  
16                  was marked yesterday at Ms. Gates' deposition. It's  
17                  Exhibit 3.

18                  Do you recognize that document?

19                  A.        Yes. Actually, I'm sorry. There's an  
20                  E-mail on the top of this document. And I haven't  
21                  read through the entire document. So I can't say  
22                  that I recognize everything. I recognize the first  
23                  page, the E-mail. That's it.

1 G. Christopher Imrey - September 23, 2010

6 Q. Mr. Imrey, now that you've had a chance  
7 to look at it, do you recognize that document? You  
8 recognize the E-mail. Do you recognize the  
9 attachment? And if it's any help to you, this came  
10 from Apollo's file as I understand.

11 MS. CLARK-WEINTRAUB: It's my  
12 understanding, as well.

13 A. I don't know.

14 Q. You don't know if that is the document  
15 that was attached to the E-mail from Ed Dewispelare  
16 to Mike Walker, cc'ing you and some other people?

17 A. Correct.

18 Q. On November 17, 2005, Ed sent you this  
19 E-mail that is in front of you as Exhibit 3 to the  
20 Gates deposition; is that correct?

21 A. I don't know. I don't know if this  
22 version, this was.

23 Q. I'm not asking about that. I'm asking  
24 about the E-mail. He sent you this E-mail?

25 A. Yes.

1 G. Christopher Imrey - September 23, 2010

2 Q. Was that the first time that you had  
3 seen a draft of the Bank of America contract where  
4 Apollo --

5 A. Yes.

6 Q. Assuming that this is the attachment  
7 which is what it has been represented to us by your  
8 counsel as presented to them by Apollo, this would  
9 have been the first draft of the Bank of America  
10 contract that came to Apollo Enterprise Solutions?

14 THE WITNESS: Please restate the  
15 question.

16 Q. You said you can't be sure that this  
17 attachment is the attachment that was for this  
18 particular E-mail?

19 A. Correct.

20 Q. Is that true for every E-mail that you  
21 see that is in a hard copy?

22 A. No.

23 Q. Do you keep electronic copies of  
24 E-mails at Apollo Enterprise Solutions?

25 A. Yes.

1 G. Christopher Imrey - September 23, 2010

7 Q. If you could turn to the schedules in  
8 this attachment. Schedule C, the servicing levels  
9 is blank; is that correct? Schedule D.

12 MS. MORRIS: Schedule D, the  
13 service levels. Then it says reproduced on  
14 following pages.

15 A. Right.

16 Q. But there's nothing there.

17 A. Yes.

18 Q. And Schedule C, service fees and  
19 training, do you know if that is the form that was  
20 used in the final contract?

21 A. No.

22 Q. No, you don't know?

23 A. No. I recall that it was a different  
24 schedule; not necessarily this Schedule C. And then  
25 not necessarily this form.

1 G. Christopher Imrey - September 23, 2010

2 Q. Who negotiated the pricing for the  
3 agreement between Apollo Enterprise Solutions and  
4 Bank of America?

5 A. Myself and Ed Dewispelare.

6 Q. And who for Bank of America?

7 A. Julie Gonzales and Ahn Gates.

8 Q. If you could turn to page 8 of the  
9 attachment there, 6.1.

10 A. Yes.

11 Q. It states that this agreement shall  
12 apply and remain in effect from the effective date  
13 and perpetually thereafter unless terminated  
14 pursuant to the following section; is that right?

15 A. Yes.

16 Q. Was that the final agreement for the  
17 term of the contract?

18 A. No.

19 Q. Do you know who suggested the change to  
20 that?

21 A. It was mutually agreed upon.

22 Q. Do you know who first suggested the  
23 change to that?

24 A. No. Actually, I believe it was the  
25 bank, now that I think about it. Because they

1                   G. Christopher Imrey - September 23, 2010  
2 wanted to limit it to a two-year term.

3                   Q.        What did Apollo want?

4                   A.        Apollo wanted a five-year term.

5                   Q.        And you mutually agreed on a two-year  
6 term with renewal?

7                   A.        Correct.

14                  Q.        Section 6.2 states, Bank of America may  
15 terminate this agreement for its convenience; is  
16 that correct?

17                  A.        Well, it says a lot more than that.

18                  Q.        Does it also say that?

19                  A.        Part of the first sentence says that.

20                  Q.        Does it say that Apollo Enterprise  
21 Solutions can terminate for convenience?

22                  A.        No.

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4                   Q.     I'm going to show you what was marked  
5     as Exhibit 1 at Ahn Gates' deposition yesterday and  
6     ask if you recognize that document?

7                   A.     Yes.

8                   Q.     What is it?

9                   A.     This is a final version of the  
10    financial service provider agreement signed by both  
11    parties.

12                  Q.     And is that your signature on the front  
13    page?

14                  A.     Yes.

15                  Q.     I'm going to show you another document  
16    that has been marked Apollo 628 to 643. And ask if  
17    if you --

18                  MS. MORRIS: Actually, we need to  
19    have that marked Exhibit 9.

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2 A. Yes.

3 Q. What is that document?

4 A. It's entitled, "Intelligent Debt  
5 Settlement, IDS System Implementation, Statement of  
6 Work."

7 Q. What was it used for?

8 A. This looks like a template that we  
9 started from and describing a statement of work.

10 Q. The statement of work for Bank of  
11 America's online payment project?

12 A. Yes. Well, you said Bank of America's  
13 online payment project? I don't believe that is the  
14 title of it.

15 Q. This is for the statement of work for  
16 what became the application service provider  
17 agreement; is that right?

18 A. Yes. I believe so.

19 Q. Was this statement of work ever  
20 finalized?

21 A. I don't know.

22 Q. Do you know if there is a copy of this  
23 statement of work?

24 A. I don't know.

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12 MS. MORRIS: I'm going to ask the  
13 court reporter to mark this document as the  
14 next exhibit which, I believe, is Exhibit 10.

15 (Document entitled, "Intelligent  
16 Debt Settlement" marked Exhibit 10 for  
17 identification as of this date.)

18 Q. Do you recognize that document?

19 Would you like to go off the record  
20 while you read it?

21 A. No. It's not that many pages. Yes.

22 Q. What is that?

23 A. This is a more fleshed out version of  
24 the Intelligent Debt Settlement IDS System  
25 Implementation, Statement of Work.

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2 Q. And is this a document that was  
3 prepared by Apollo Enterprise Solutions?

4 A. Yes.

5 Q. Can you turn to page 3 under number 2,  
6 objective. The fourth subparagraph states, project  
7 to be completed within the estimated costs levels  
8 agreed to by both parties. See Exhibit B, project  
9 financial model; is that right?

10 A. Yes.

11 Q. What is the project financial model?

12 A. The project financial model was a  
13 delineation of the costs and charges that will be  
14 incurred by Bank of America for installation,  
15 configuration, licensing transactions.

16 MS. MORRIS: Can you mark that as  
17 the next Exhibit 11.

18 (Document bearing production Nos.  
19 Apollo 600 and 601 marked Exhibit 11 for  
20 identification as of this date.)

21 Q. Do you recognize that document?

22 A. It seems to be a version of the  
23 document.

24 Q. Of which document?

25 A. Exhibit B. Pricing financial model.

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2 Q. That's Exhibit B to the document that's  
3 marked as Exhibit 10?

4 A. I'm not sure.

5 Q. Going back to page 3 in number 2, the  
6 objective that refers to Exhibit B, quote, project  
7 financial model, end quote; does it not?

8 A. Yes.

9 Q. And this document at Apollo 601 has at  
10 the top of it, Exhibit B, project financial model?

11 A. Yes.

12 Q. Do you know if this document which has  
13 been marked as Exhibit --

14 MS. CLARK-WEINTRAUB: 11.

15 Q. -- 11, is Exhibit B to the document  
16 that is Exhibit 10 to this deposition?

17 A. It appears to be a version of it.

18 MS. MORRIS: I'm going to ask the  
19 court reporter to mark the next exhibit which  
20 is Exhibit 12.

21 (Copy of a PowerPoint  
22 presentation marked Exhibit 12 for  
23 identification as of this date.)

24 Q. Do you recognize that document?

25 A. Yes.

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2 Q. What is that?

3 A. This is a PowerPoint presentation that  
4 was given to Julie Gonzales for presentment for her  
5 internal group.

6 Q. And who gave that PowerPoint  
7 presentation?

8 A. Who gave it to Julie Gonzales?

9 Q. Yes.

10 A. Oh, I think it was either myself or Ed.

11 Q. On the bottom of the first page and  
12 actually on every page it says, February 22, 2006.

13 Do you recall if that was about the  
14 time the presentation was given?

15 A. Yes.

16 Q. Yes, it was about that time?

17 A. When you say "presentation given," we  
18 showed this to Julie Gonzales. We gave her the  
19 presentation. And then, apparently, she internally  
20 presented it within Bank of America. And I don't  
21 know the specific date of her presentation so...

22 Q. What was the date of your presentation?

23 A. Around this time frame.

24 Q. At the bottom of the last entry on the  
25 first page states, "The Apollo system incorporates

1                   G. Christopher Imrey - September 23, 2010  
2                   bureau data and analytics in order to present  
3                   customers with intelligent payment or settlement  
4                   offers that best fit their current ability to pay."

5                   A.        Yes.

6                   Q.        As it is used now, does the Apollo  
7                   system incorporate bureau data and analytics to  
8                   present customers with an intelligent payment or  
9                   settlement offer?

10                  A.        I'm sorry. Repeat the question,  
11                  please.

12                  Q.        As the Apollo system is used now, does  
13                  it incorporate bureau data and analytics in order to  
14                  present customers with intelligent payment or  
15                  settlement offers?

16                  A.        Yes.

17                  Q.        What's the bureau data that is  
18                  incorporated?

19                  A.        Scores.

20                  Q.        What are the scores used for?

21                  A.        Scores are used for a variety of  
22                  features and functionality. They can be work flows.  
23                  Different sets of offers. Different look and feel  
24                  different trigger multi-life cycle events.

25                  Q.        Has Bank of America provided

1                   G. Christopher Imrey - September 23, 2010  
2                   authorization to Apollo to access the scores of its  
3                   individual customers?

4                   A.        No.

5                   Q.        Are the scores used by Apollo to  
6                   develop an intelligent payment or settlement offer?

7                   A.        I don't -- Apollo doesn't offer any  
8                   settlement offers because Apollo is not a collection  
9                   agency or a licensed agent of the bank. Apollo  
10                  simply is a solutions provider.

11                  Q.        Who uses the scores from the bureaus to  
12                  develop an intelligent payment or settlement offer  
13                  to make to the customer?

14                  A.        The client.

15                  Q.        Bank of America?

16                  A.        No.

17                  Q.        Which client?

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13                   A.        Okay. All right.

14                   Bank of America, from what we were led  
15 to believe, incorporates bureau data as part of its  
16 scoring and analytics and an account segmentation  
17 and status codes.

18                   Q.        When Apollo Enterprise Solutions was  
19 offering its services to Bank of America was Apollo  
20 Enterprise Solutions offering to do those analytics  
21 to present the customers with an intelligent payment  
22 or settlement offer?

23                   A.        Well, the system is configurable. So  
24 either, you know, the bureau data could be retrieved  
25 by the bank passed to, the credit report could be

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2                   passed to Apollo. The Apollo system can go retrieve  
3                   the credit report independently using the bureau  
4                   codes of the bank on behalf of the bank. Since  
5                   they're the owner of the credit report and have  
6                   permissible purpose to pull the credit report. The  
7                   credit report could be pulled by the bank and used  
8                   to compile and segment accounts. And then, you  
9                   know, give a code of 1 to 5, for example.

10                   And then, you know, the accounts, you  
11                   know, everybody -- that's a 2, had some bureau data  
12                   or analytics to used to calculate what a 2 is. And  
13                   then the system could be configured to go present  
14                   different offers to somebody's who's categorized as  
15                   a 2.

16                   So there's many different methods of  
17                   implementation that can be used. And so it's simply  
18                   configurable.

19                   Q.        Which method is used now?

20                   A.        I believe that Bank of America  
21                   incorporates bureau data or they pull the credit  
22                   report themselves. They do not pass it to us. And  
23                   they use it to mark and segment accounts internally.

24                   Q.        Moving to page 3.

25                   A.        Yes.

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2 Q. IDS Pay. It states, "The IDS Pay," and  
3 then the trademark symbol there, "System, provides a  
4 secure platform for customers to pay their current  
5 accounts on line."

6 Is that what it says?

7 A. Yes.

8 Q. Is that your understanding of IDS Pay?

9 A. Yes.

10 Q. IDS Collect. The IDS Collect system  
11 uses account history scoring an analytic and bureau  
12 data to provide intelligent offers to customers to  
13 self-secure their delinquent accounts with  
14 individualized payment terms.

15 Is that your understanding of IDS  
16 Collect?

17 A. Not exactly.

18 Q. What is your understanding of IDS  
19 Collect?

20 A. Well, it can use account history  
21 scoring and analytics. And can use bureau data. So  
22 those are options at the customers, you know, or the  
23 clients -- sorry. The client's request.

24 Q. When IDS Collect is not using those  
25 options, what is it doing?

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2                   A.     It decisions the customers to determine  
3     their status. And then presents options that don't  
4     use account history, scoring and analytics. But the  
5     IDS Collect refers to an account in a status which  
6     is greater than 30 days delinquent and less than a  
7     pre-charge off.

8                   IDS Recover refers to an account that  
9     is charged off or post-180 days. So the difference  
10    between Pay, Collect and Recover is the status of  
11    the customer and the level of delinquency, which  
12    system is being used.

13                  Q.     And what do you rely on for your  
14    definitions?

15                  A.     The industry standard definitions.  
16     Federal Reserve Board definitions, government  
17     agencies, credit bureau reporting, and fact  
18     definitions.

19                  Q.     And do those different definitions  
20    include the term IDS Collect or just collect?

21                  A.     Well, just collect or collections.

22                  Q.     And do they include the term IDS  
23     Recover or just recover?

24                  A.     Recover or charge-off or recovery.

25                  Q.     On page 18 in the box, the phrase in

1 G. Christopher Imrey - September 23, 2010  
2 there says, "The Apollo IDS self-settlement system  
3 authenticates the user and pulls a real-time credit  
4 report."

5 A. Yes.

6 Q. What is the Apollo IDS Self-Settlement  
7 system?

8 A. That's the application.

9 Q. Which application?

## 10 A. The Intelligent Debt Solution system.

11 Q. So the Intelligent Debt Solution,

12 Intelligent Debt Solution system authenticates the  
13 user?

16                   A.        No.     The Apollo Intelligent Debt  
17     Solution Self-Settlement system authenticates the  
18     user.

19 Q. How is the self-settlement system  
20 different or added to the term IDS?

23 THE WITNESS: Repeat the  
24 question, please.

25 Q. What does self-settlement mean?

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2                   A.     Self-settlement means that a customer  
3     or end-user interacts with any type of electronic  
4     device and does not involve a human.

5                   Q.     Does the Apollo IDS system as used for  
6     Bank of America, pull a real-time credit report when  
7     a customer logs on?

8                   A.     No.    But it does pull the Experian  
9     authentication scores.

10                  Q.     Page 19 the IDS decision engine. And  
11     there's an explanation that says, "The IDS decision  
12     engine computes, calculates and generates multiple  
13     settlement offers for the customers based on the  
14     customer's current ability to pay and customer's  
15     account history."

16                  Did I read that correctly?

17                  A.     Yes.

18                  Q.     Does the IDS decision engine do those  
19     things for Bank of America?

20                  A.     It does portions of those things.

21                  Q.     Which portions of those things does it  
22     do?

23                  A.     The decision engine computes,  
24     calculates and generates multiple offers for the  
25     customer. And it's not necessarily based on the

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2 customer's current ability to pay. But it is based  
3 upon the customer's account history.

4                   Q. And that information that is used to  
5 compute that is provided by Bank of America; is that  
6 right?

7                   A. Yes.

8                   Q. The IDS parser on page 19 is described  
9 as, quote, The IDS parser, extracts and calculates  
10 user defined credit report items and up to the  
11 minute account data. The IDS parser then submits  
12 both the calculated bureau and account data to the  
13 IDS decision engine for decisioning intelligence,  
14 end quote.

15                   Did I read that correctly?

16                   A. Yes.

17                   Q. Does the Apollo Web site provide that  
18 service for Bank of America?

19                   A. Yes, in part.

20                   Q. In what part?

21                   A. Well, the parser extracts and  
22 calculates the credits, the authentication scores.  
23 It brings in up to the minute another account data.  
24 Submits those to the decision engine for  
25 authentication. Once the customer's authenticated,

1                   G. Christopher Imrey - September 23, 2010  
2                   the account data is submitted to the decision engine  
3                   for decisioning intelligence.

4                   Q.        What is decisioning intelligence?

5                   A.        Decisioning intelligence is the ability  
6                   to create a decision and to present different offers  
7                   for different types of accounts and different  
8                   statuses, different work flows.

9                   Q.        Okay.

10                  A.        Different presentation of screens or  
11                  pages and different content. Look and feel. Layout  
12                  of pages. And also, you know, pre or  
13                  post-processing of accounts.

14                  Q.        And all of that is determined by Bank  
15                  of America, if at all?

16                  A.        Yes, yes.

19                  I'm going to show you what was marked  
20                  as Exhibit 2 at Gates' deposition. And I realize  
21                  maybe you have seen that declaration before.

22                  Have you seen that declaration before?

23                  A.        Yes.

24                  Q.        Attached to it there are four exhibits  
25                  which are described in paragraph 4 of red line

1                   G. Christopher Imrey - September 23, 2010  
2 versions of the agreement.

3                   A.        Yes.

4                   Q.        Do you agree that those are red-lined  
5 versions of the agreement?

6                   A.        Which exhibits are you referring to?

7                   Q.        Exhibit 1, 2, 3 and 4?

8                   A.        Yes.

9                   Q.        In Exhibit 1, 2, that declaration on  
10 page 7, there's a red-lined change to paragraph 6.2.

11                   Do you know who made that change?

12                   A.        I don't know if this would have been  
13 either Ahn Gates or Corinne Miller.

14                   Q.        Do you know whether Ahn Gates or  
15 Corinne Miller suggested a termination fee should be  
16 inserted?

17                   A.        This is pretty standard if there's a  
18 termination prior to the end of the contract.

19                   That's usually what is used to calculate it. And it  
20 looks like this one seems to be one of the  
21 mid-interim revisions because we, Bank of America  
22 had put, wanted a two-year term. And so this is  
23 1/24th, which would have been and then deleted is  
24 36th, okay. So the revision says deleted 1/36th.  
25 So that the contract either goes in perpetuity where

1                   G. Christopher Imrey - September 23, 2010  
2 there's no termination, or it has an effective  
3 termination date. And then either party can choose  
4 to or elect to renew the contract. This version had  
5 a three-year period for the termination of the  
6 contract.

7                   Q.        You know, I'm going to stop you  
8 because my question was do you know who asked for  
9 the termination fee to be inserted into the  
10 contract?

11                  A.        Well, this is a modification from 36  
12 which would correspond to a termination in the  
13 middle of the contract of a three-year agreement.

19                  Q.        Did Apollo ask for a termination fee?

20                  A.        It was pretty standard that termination  
21 fee would be negotiated.

22                  Q.        Let's go back to Exhibit 3 to the Gates  
23 deposition on page 8.

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5 Q. On page 8 is the attachment at 6.2.

6 Would you agree there is a no  
7 termination fee in 6.2 in that contract?

8 A. Yes.

9 Q. Do you know who suggested that the  
10 termination fee should be inserted into the  
11 contract?

12 A. No. And now that I see this language,  
13 I do recall that this was, a 6.2 was a clause that  
14 Bank of America which is a nonstandard clause that  
15 they could terminate for convenience. And  
16 typically, if the bank were, if we were to strike  
17 that out and say we'll remove it entirely, 6.2, the  
18 bank may come back with an offer to mitigate that  
19 sentence with an offer to a termination fee if they  
20 do decide to terminate for convenience. So it may  
21 have been introduced by Bank of America as a  
22 concession.

23 MS. MORRIS: I'm going to ask for  
24 this to be marked as the next exhibit.

25 (Three-page document dated April

1                   G. Christopher Imrey - September 23, 2010  
2                   4, 2006 marked Exhibit 13 for identification  
3                   as of this date.)

4                   Q.        This is taken from the electronic  
5                   version. The April 4, 2006 version of the red line  
6                   which is Exhibit 2 to the Gates declaration.

10                  Q.        And if you go to page 7, 6.1 and 6.2.

23                  Q.        Exhibit 2, it shows the red line  
24                  changes to those paragraphs.

25                  A.        Which page?

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2                   Q.       Page 7.

3                   A.       Page 7.    Okay.

9                   Q.       If you look at Exhibit 13, you will see  
10 at the top there are a list of changes that are made  
11 to page 7. And as you suggested, there are some  
12 changes here by Ahn Gates regarding the two and  
13 three years!

14                   Would you agree with me on that?

15                   A.       Yes.

16                   Q.       And then it states, page 7 inserted.  
17 Corinne, quote, Bank of America shall also be  
18 subject to a termination fee equal to one.

19                   Would you agree that that shows that  
20 Corinne Miller asked for that insertion?

23                   A.       I don't know if she asked for it.

24 Typically somebody would be documenting a change  
25 that was discussed. So they may have agreed to it

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2 and then Corinne said, I'll insert the language or  
3 Ahn agrees to it and she says I'll insert the  
4 language.

5                   So I couldn't tell you who requested  
6 it. But Corinne was clearly the inserter of that  
7 information. And if you look below, Ahn Gates  
8 removes 36th. She changes it to 24th. So  
9 therefore, they must have been in agreement to this  
10 clause. Because they wouldn't be negotiating if she  
11 was not agreed to. And if it was a request by  
12 Apollo solely and not agreed to, it would have been  
13 stricken. The entire sentence would not have a  
14 revision on it in the middle of 36 to 24th. It  
15 would have been stricken completely by Ahn Gates.

16                   So the fact that she actually changes  
17 the term, if you look at that date, the 4/7, she  
18 changes the term from 3 to 2. And she changes the  
19 36 to 24 to correspond with the term.

20                   Q.     So...

21                   A.     Thereby signifying that this must have  
22 been something that they were negotiating together  
23 and were in agreement at that time.

24                   Q.     So they were negotiating 6.1 and 6.2?

25                   A.     Yes. These are revisions to that

1                   G. Christopher Imrey - September 23, 2010  
2 paragraph.

3                   What's interesting is that she makes a  
4 revision of the --

8                   MS. MORRIS: I am.

9                   I'm going to ask the court  
10 reporter to mark this as Exhibit 14.

11                   (Document bearing production Nos.  
12 Apollo 155 through 204 inclusive, marked  
13 Exhibit 14 for identification as of this  
14 date.)

15                   Q. Do you recognize that document?

16                   A. No.

17                   Q. Did you say that you were one of the  
18 people who negotiated the application service  
19 provider agreement?

22                   A. Yes.

23                   Q. Did you see the various versions of it  
24 that were exchanged?

25                   A. No.

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2 Q. You did not?

3 A. Not every one of them. That's why you  
4 say do I recognize this one? No. This is some  
5 version. I don't know which one it is. And I don't  
6 recognize it.

7 Q. Who else at Apollo was making changes  
8 to the application service provider agreement?

9 A. Who else from whom?

10 Q. From Apollo Enterprise Solutions.

11 A. You mean who from Apollo was making  
12 changes?

13 Q. Yes.

14 A. You said who else? I don't understand  
15 the question.

16 Q. Well, sorry. We already saw that  
17 Corinne was making changes and we discussed that.

18 Other than Corinne, who else was  
19 reviewing the application service provider agreement  
20 and making changes to it?

21 A. No one.

22 Q. If this document was produced to us by  
23 Apollo Enterprise Solutions in this litigation,  
24 would you agree that it came from Apollo Enterprise  
25 Solutions file?

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2 A. I don't know.

3 Q. If you look on page -- these don't have  
4 numbers, so I'm going to use the Bates numbers,  
5 Apollo 161.

6 A. Yes.

7 Q. There's this 6.1 again. It appears  
8 that there appears to be a deletion for the purposes  
9 of this paragraph. The value of this contract shall  
10 be deemed to be \$1 million.

11 Do you see that?

12 A. Yes.

13 Q. Do you remember the negotiations  
14 regarding that million dollars?

15 A. Vaguely.

16 Q. What were the negotiations regarding  
17 the million dollars?

18 A. I believe it was a number that was  
19 picked in order to determine what the termination  
20 fee would be equal to when you divided it by this.

21 So Bank of America terminated without  
22 cause at its convenience in month 6, and roughly  
23 3/4ths of the one million dollars would be due or  
24 \$750,000 would be due.

25 Q. Do you know who proposed the million

1                   G. Christopher Imrey - September 23, 2010  
2 dollars?

3                   A.        No.

4                   Q.        If you turn to page Apollo 164 under  
5 Section 9.2, to the right there is a comment, two  
6 comments that say, "Mike?"

7                   Who's Mike?

8                   A.        This appears to be Mike Walker. And it  
9 appears to be he was the chief operating officer of  
10 Apollo Enterprise Solutions. And this appears to be  
11 a comment, probably by Corinne, to ask Mike about  
12 the ability to comply with furnishing source code  
13 escrow, or what versions were in source codes  
14 escrow, or what versions or commitments to service  
15 level commitments or SLAs. So she was probably  
16 referring making a note to herself to discuss that  
17 with Mike.

18                   Q.        If you turn to Apollo 172, under  
19 paragraph 25.2.

20                   A.        Yes.

21                   Q.        Do you remember negotiations regarding  
22 that paragraph?

23                   A.        Talking about 25.2 you said?

24                   Q.        25.2. Yes.

25                   Under confidentiality and information

1                   G. Christopher Imrey - September 23, 2010  
2 protection.

3                   A. Yes. It even references. It says,  
4 upon expiration or termination of this agreement --  
5 the expiration refers to the contract expires, the  
6 term of the contract expires must be mutually  
7 renewed upon by both parties. The termination by --

8                   Q. I'm going to have to stop you.

9                   My question was do you remember  
10 negotiations regarding that paragraph?

11                  A. Not this specific revisions.

12                  Q. So you don't know which party, whether  
13 it was Apollo Enterprise Solutions or Bank of  
14 America, N.A. that was asking for changes to 25.2?

15                  A. Well, typically, if I was to look at  
16 the comments in the margin as what was deleted, it  
17 seems that Bank of America is deleted. And it says  
18 the recipient, we have confidential information,  
19 Apollo has confidential information, and the clients  
20 have confidential information. And it's very  
21 typical for us to want to protect our confidential  
22 information. And it's a two-way street. And it  
23 looked like this was a one-way street.

24                  So it said that looks like the  
25 revisions were asking that either party properly

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2 return to the discloser, rather than Apollo return  
3 to Bank of America or Bank of America return to  
4 Apollo. So that way it was a two-way street of  
5 confidential information.

6 Q. Can you turn to Apollo 173.

7 A. Yes.

8 Q. Do you see changes to paragraph 25.6.

11                   A.        No.    I don't recall any specific  
12 negotiations on 25.6.

13 Q. Do you recall negotiations on the 25.7?

14                   A.        No.      I don't recall any specific edits  
15        here.

16 Q. Would you agree that page Apollo 173  
17 reflects edits of the 5.6 and 25.7?

18 A. Yes.

19 Q. The very last partial paragraph at the  
20 bottom, 25.10.1, again, there's a comment Mike - all  
21 make mutual.

22                   Would you think that's another comment  
23 from Corinne?

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2 A. Yes. It appears to be another question  
3 that she has regarding this. Because this, again,  
4 dealt with some operational components: Accept,  
5 transmit, store or otherwise impact. And then it  
6 talks about the Bank of America security  
7 requirements. Which again, would be, she wanted to  
8 ask Mike about. And she writes, "What are these?"  
9 And then highlights it on the next page.

10 And actually going on to the next page  
11 there are a few other notations under 25.1.2  
12 questions. And again, also with Mike's name.

13 Do you again think those are from  
14 Corinne?

15 A. Yes.

16 Q. Moving to Apollo 180 under paragraph  
17 36.4.

18 Would you agree that that looks, again,  
19 as if there is some negotiation going on and there's  
20 a comment shown by the comment and to check with  
21 legal?

24 A. This is almost illegible, this comment.  
25 So I definitely want to check with legal. This is

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2 some revisions there. And then I think it looks to  
3 me like it's a Corinne comment which says that Ahn  
4 was going to check with legal regarding whether or  
5 not this could be, whether this language is mutually  
6 agreeable. But I can't even tell what it says.

22                   MS. MORRIS: I'm going to ask the  
23 court reporter to mark this document with the  
24 next exhibit number 15.

25                   (Document bearing production Nos.

1 G. Christopher Imrey - September 23, 2010  
2 BANA-02837 and 02837-0002 marked Exhibit 15  
3 for identification as of this date.)  
4 Q. Mr. Imrey, the top E-mail does not  
5 involve you. But the one underneath, do you  
6 recognize that?

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7 Q. Do you recognize the E-mail, Tuesday  
8 July 8, 2008 from Mike Walker?

9 A. Yes.

10 Q. Who is Jim Mahoney?

11 A. Jim Mahoney was our EVP of business  
12 development. And was helping us to get the recovery  
13 side accounts deployed.

14 Q. In the second paragraph Mike Walker  
15 refers to open side settlements on credit card  
16 accounts.

17 What does that term mean?

18 A. An open side is a pre-chargeoff or  
19 collect account.

20 Q. Did you discuss this E-mail with Mike  
21 Walker before he sent it out?

22 A. I don't recall.

23 Q. In July of 2008 you were the president  
24 of Apollo Enterprise Solutions; is that right?

25 A. Correct.

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2 Q. And you were also the CEO at that time  
3 or was there no separate CEO?

4 A. We became an Inc. right around this  
5 time period. So I'm not sure. President of the  
6 LLC. And we had no CEO. Typically not a CEO of an  
7 LLC. I became president CEO of the Inc. on its  
8 formation, around July or August of 2008.

9 Q. In this Mike Walker states, "Apollo  
10 will not submit any invoice or request for payment  
11 regarding open side settlements that have not been  
12 completely agreed to in advance between Bank of  
13 America and Apollo."

14 Did I read that correctly?

15 A. Yes.

16 Q. Do you recall any discussions at Apollo  
17 Enterprise Solutions regarding that?

18 A. Yes.

19 Q. What was discussed?

20 A. Well, this was a result of a meeting  
21 that we had had with Sharon Stockton, Julie Whitmore  
22 via phone, Jim Mahoney, Alex Rhoads, Vinnie Iacconno  
23 in Newark on June 26th, and John Verjanek. And John  
24 Verjanek had found that there were recover accounts  
25 going through the system. And when we presented

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2                   that to the bank, Sharon Stockton said that there  
3                   were no recover accounts going through the system.

4                   And then we were talking about pricing.  
5                   We had gone to the bank to ask for, to say that we  
6                   needed more money for the contract. Because we  
7                   needed to renegotiate the pricing because they  
8                   currently -- the volumes were increasing on the  
9                   site. The system was starting to reach capacity.

10                  We had now turned on an additional line  
11                  of business, DFS. And we were also moving to add  
12                  redundancy in the system. We were asked by the bank  
13                  to include disaster recovery plans and business  
14                  continuity plans additionally to support more  
15                  sustained critical operations.

16                  So the 10,500 a month that was used to  
17                  support some of the base, baseline components of the  
18                  system was grossly inadequate. Apollo had already  
19                  spent, you know, money and time and effort trying to  
20                  accommodate the limitations of that amount. And we  
21                  wanted to fix the pricing metrics that existed with  
22                  recover accounts and with collect accounts.

23                  And this was, Sharon Stockton made a  
24                  comment about the open side settlements were a  
25                  program of a batch of specific account numbers that

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2 the bank was going to provide. And have the  
3 customers then have the ability to receive  
4 settlements and differentiated set of offers. And  
5 she had said something about there was no decision  
6 fee. And that we were not going to be charging her  
7 a decision fee. And we said that absolutely there's  
8 a decision fee that would be charged anytime a  
9 decision is made in the system.

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20 MS. MORRIS: I'm going to ask the  
21 court reporter to mark this as the next  
22 Exhibit 16.

23 (Document entitled, "Bank of  
24 America MEP/FIA Project" marked Exhibit 16  
25 for identification as of this date.)

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2 Q. Mr. Imrey, do you recognize that  
3 document?

4 A. Yes. This looks like a documentation  
5 update of the Web site. Apollo maintains a current  
6 copy of functionality. And typically when changes  
7 are introduced into the system or new functionality  
8 exists or new features that are added, a document  
9 like this is generated to document what is occurring  
10 on the site. This seems to be a portion of that.

11 Q. On page 2 of 16 it states, July 3,  
12 2010; is that right?

13 A. Yes.

14 Q. On page 11 of 16 under summary of  
15 functionality, the subheading is functionality for  
16 current or past due accounts; is that correct?

17 A. Yes.

18 Q. Then there's a separate heading for  
19 functionality for only past due accounts?

20 A. Yes.

21 Q. And on page 12, the last heading is  
22 settlement options, open paren, for delinquent  
23 customers, close paren; is that right?

24 A. Yes. This is my first time seeing this  
25 document. But this is exactly what we would -- type

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2 of document, what happens for delinquent customers  
3 and what type of settlement offers they would get  
4 and how it's deployed.

5                   Q.     On page 15 of 16 under changes in this  
6 release, the first box has settlements for some past  
7 due accounts the MEP and FIA sites now provide  
8 settlement offers for certain eligible past due  
9 accounts. This is a new feature that did not exist  
10 in the previous release; is that correct?

11                  A.     That's what the text says, yes.

12                  Q.     Was that correct?

13                  A.     Yes.

14                  Q.     Going back to page 12 under settlement  
15 options...

16                  A.     Yes.

17                  Q.     The third paragraph states, "When an  
18 account becomes delinquent it gets assigned to FIA  
19 card services for internal recovery so every  
20 delinquent account which is eligible for the  
21 settlement options, see the FIA branding on the  
22 remaining Web pages (even if it is a BAC account)."

23                  What does that mean?

24                  A.     Well, this would be an example of a  
25 decision being performed that says if the account is

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2 delinquent it gets assigned to FIA card services.  
3 So this would now say that every delinquent account  
4 which is eligible for settlement, which is another  
5 decision, see the FIA branding on the remaining Web  
6 page.

7                   So if somebody logs into the Bank of  
8 America branded site which would be  
9 MyEasyPayment.com or MiPagoFacil.com, the site is  
10 branded with Bank of America logos, colors, et  
11 cetera. FIA card services is MyEasyPayment. And  
12 MiPago FIA, MiPagoFacil, or something like that  
13 which is the Spanish version of the generic branded  
14 FIA site which is a different color. No logos. And  
15 was used to allow customers that had a nonbranded  
16 Bank of America credit card to log on and use the  
17 site. The nonbranding would be, you know, Canadian  
18 card. A Bank of Nova Scotia type card. A card that  
19 is issued, appears to be issued by a branded entity.  
20 Not Bank of America.

21                   The name of FIA card services it says  
22 was used for internal recovery. So it appears that  
23 Bank of America would be calling the customer or  
24 sending them a letter saying bank services is now  
25 contacting you to receive payment for every

1                   G. Christopher Imrey - September 23, 2010  
2 delinquent account which is eligible for settlement  
3 options.

4                   So, in this case the decisioning,  
5 decision engine was configured to change the  
6 branding, look and feel of the content of the site.  
7 To remove the Bank of America logo. Change the  
8 color to a green which was the FIA card services  
9 once a customer logged in for all the remaining  
10 pages.

11                  Q.     So were all delinquent customers being  
12 pushed onto those pages?

13                  A.     No. This is an example of the decision  
14 engine having a different work flow for customers  
15 that have a different status code. In the case of  
16 an FIA customer who happens to be eligible for  
17 settlement options, they would then be presented  
18 with two options. And the branding would stay the  
19 same as green and the content would be the FIA  
20 branding.

21                  In the case of a Bank of America  
22 branded login, the decision engine would render the  
23 screen to change to green, to the FIA. Would then  
24 present the additional settlement options to make a  
25 single discounted payment today to settle for less

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2 than the full amount or to make three equal payments  
3 over time to add up to the full amount.

4                   Q.     In the last paragraph, it states, "For  
5 the discounted settlement the bank provides a floor  
6 percentage (specified separately for each account in  
7 the table of delinquent accounts) then Apollo simply  
8 adds 5 percent to it. This is all we can do in the  
9 initial release of settlement options because the  
10 bank is unwilling to share their rules for  
11 calculating the discount. And they will not provide  
12 the customer's full Social Security number which is  
13 required for pulling an Experian credit report."

14                   Is that what it says?

15                   A.     Yes.

16                   Q.     The settlement offer then was provided  
17 by Bank of America; is that correct?

18                   A.     Well, this looks like an implementation  
19 where the decision engine would calculate what is  
20 shown on the screen. And this is a description of  
21 the method of implementation for, you know, this  
22 case it's using, the decision engine uses a file  
23 that it is provided and each the file and account  
24 number. So when a customer would log in, if the  
25 customer's account number existed in the file so the

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2 decision engine will run and then would check the  
3 table of delinquent accounts. And then they would  
4 provide a floor percent in that table it appears.  
5 And then the calculated items would be created by  
6 adding, multiplying the floor percent times the  
7 current balance. And then adding 5 percent, the 4  
8 percent plus 5 percent times the current balance.  
9 Which looks like they discounted single payment for  
10 less than the phone number amount. So that was the  
11 method that was used to implement this. It's one of  
12 the various methods of using the decision engine to;  
13 A, modify the work flow and the prior paragraphs.  
14 To modify the content, the look and feel. And then  
15 claimant elements that come from various parties; in  
16 this case, the file provided by the bank. And then  
17 perform additional logic to be, you know, increase  
18 the 4 percent or some other number. Multiply and  
19 calculate out those elements and then present them  
20 onto the page. And it says this is all we can do in  
21 the initial release of some options because the bank  
22 is unwilling to share their rules for calculating  
23 discount. So this was quite -- this is quite more  
24 of a nonstandard implementation. Because typically  
25 the rules for calculating the discount would be

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2 included and marked as part of the profile. So that  
3 additional options and information that provided by  
4 the customer of the Web site or third-party  
5 providers such as Experian could be incorporated  
6 into the offers.

7                   But this was the first pass. So on the  
8 first pass the data elements were, you know, didn't  
9 include the Apollo system providing a pulling credit  
10 report.

11                   Oh, I notice that there's also  
12 additional --

16                   MS. MORRIS: I'm going to ask the  
17 court reporter to mark this document as the  
18 next Exhibit 17.

19                   MS. CLARK-WEINTRAUB: Yes.

20                   (Document bearing production Nos.  
21 Apollo 852 and 853 marked Exhibit 17 for  
22 identification as of this date.)

23                   Q. Do you recognize this document?

24                   A. No.

25                   Q. Do you recognize the E-mail on Apollo

1                   G. Christopher Imrey - September 23, 2010  
2 853 from Adrian Gluck to you dated April 30, 2010?

3                   A.        Yes.

4                   Q.        Do you recognize the E-mail above it  
5 from you to Adrian Gluck dated April 30, 2010?

6                   A.        Yes.

7                   Q.        In the first E-mail, Mr. Gluck asked  
8 for the definition of Web hit. And in the second  
9 you responded, "Evan will E-mail you the one used  
10 with our lawyers." Is that correct?

11                  A.        Yes.

12                  Q.        How many different definitions of Web  
13 hits were there?

18                  Q.        In your answer you said, "Evan will  
19 E-mail you the one he used with our lawyers."

20                  How many were there?

21                  A.        Oh, there's only one definition of Web  
22 hit.

23                  Q.        Is that the definition used by Evan  
24 Pinchuk in his E-mail to Adrian Gluck of April 30th  
25 on the first page?

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2                   A.     Well, this appears to be a summary of  
3 that. That is the definition of Web hit. And  
4 there's an industry standard term.

5                   Q.     But that's not the definition of Web  
6 hit from Wikipedia; is it?

9                   A.     Well, interestingly enough, Wikipedia's  
10 definition of Web hit, this actually appears to be  
11 what it used to be. It's been revised. It's been  
12 changed mysteriously. And actually now refers to  
13 not Web hits. It actually, there is no definition  
14 of Web hit. It actually refers to another page  
15 which was changed subsequent to the termination  
16 notice from Apollo.

17                   Mysteriously, Wikipedia has also  
18 identified that in the revisions to that page of Web  
19 hit, the person or persons identified had been  
20 identified, had been characterized and identified by  
21 Wikipedia as being rogue. They had basically been  
22 barred from use of Wikipedia.

23                   This was actually a real surprise when  
24 I went and looked it up the other day. And so there  
25 is no definition of Web hit on Wikipedia anymore,

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2 subsequent to I think it was January-February 2010.  
3 Prior to January 2010, there was a definition of Web  
4 hit on Wikipedia which is consistent with this  
5 definition.

6                   MS. MORRIS: I'm going to mark  
7 this document which is your declaration in  
8 this action, I think, next exhibit to the  
9 this deposition.

10                   (Declaration of G. Christopher  
11 Imrey marked Exhibit 18 for identification as  
12 of this date.)

13 Q. Do you recognize that document?

14                   MS. MORRIS: Maybe we can just  
15 stipulate that it was the declaration that  
16 was filed in this action.

17                   MS. CLARK-WEINTRAUB: Sure.

18 A. Yes.

19 Q. In paragraph 7, about halfway down you  
20 state, "A Web hit is simply a request to a Web  
21 server for a file." And then you cite to Wikipedia.

22 A. Yes.

23 Q. Are you saying that that definition is  
24 no longer there?

25 A. Absolutely been modified and changed.

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7 Q. Did you, from 2006 to 2009, did Apollo  
8 Enterprise Solutions invoice Bank of America based  
9 on the number of its Web hits?

10 A. No.

11 Q. Why not?

12 A. We had no idea that there was that --  
13 we didn't have any method of invoicing. And there  
14 was no pricing components for, you know, invoicing  
15 based on -- we had not reviewed the -- strike that.

16 Q. No, don't. Carry on.

17 A. I don't want to carry on in the  
18 sentence, starting a fraction.

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4 THE WITNESS: We were unaware  
5 that there was a pricing element in the  
6 contract that allowed us to charge for Web  
7 hits. And that the current site was  
8 exceeding the limits that allowed us to  
9 charge money for additional Web hits above  
10 170,000.

11 Q. How did you become aware that there was  
12 that pricing in the contract?

13 A. Well, when we, when -- I think it was  
14 in the fall of 2009, we did a contract review of the  
15 Bank of America contract. And at that point we  
16 discovered that there was this clause of 170,000 Web  
17 hits. And that anything over 170,000 Web hits was  
18 billable or mutually through to be negotiated price,  
19 I believe. It's in one of the exhibits.

20 Q. What are the costs for Web hits  
21 exceeding \$170,000 a month?

22 A. Well, if you look at the base, the base  
23 costs of, divide 170, 10,500 divided by 170,000  
24 comes out to about 6 cents. So the original  
25 contract was pricing the Web hit in about 6 cents a

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2 transaction, 6 cents per Web hit. And that basis  
3 was used to calculate the value of the Web hits in  
4 excess over 170,000.

5                   Q. So it was a pure mathematical  
6 calculation?

7                   A. Yes.

8                   Q. Based on the terms of the contract of  
9 payments?

10                  A. I'm sorry. Pardon?

11                  Q. Based on the terms of the contract  
12 payments under Schedule D? C. Sorry. Schedule C.

13                  A. Yes. Based on, based on, yes. That's  
14 correct. It's Exhibit B in one place and Schedule C  
15 in another place.

16                  Q. Are you familiar with the revised  
17 invoices that were sent to Bank of America?

18                  A. Yes.

19                  Q. Do you know how Web hits was calculated  
20 on those revised invoices?

21                  A. Yes.

22                  Q. How was it calculated?

23                  A. Well, we have a program installed  
24 called CertStats which tracks a variety of different  
25 elements of activity on the Web site. And have

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2 archives of all the months of the sites since its  
3 inception.

4                   And so, when we originally discovered  
5 that that 170,000 Web hits were being exceeded in  
6 the fall of 2009, we started to perform an audit of  
7 exactly how many Web hits were occurring on the  
8 site. And, you know, when those, you know, when  
9 those Web hits happened. And at what point did it  
10 start exceeding the 170,000.

11                  We went to the CertStats and went  
12 through the archives. And had the data were stored  
13 from archive in the audit, we, the CertStats  
14 reports, there are many different terms that are  
15 used in CertStats reports. And there's, you know,  
16 there's a unique visitor. There's an authentication  
17 or a login. There's a page view.

18                  And so what you always do in the case  
19 of trying to calculate resources that are consumed  
20 by the site, the Web hits is the only method to  
21 actually track that. And that's why it was put into  
22 the contract originally, was to try and create a  
23 threshold for when, you know, for how much, how many  
24 servers were provisioned and how many processors and  
25 RAM and bandwidth was provisioned for the initial

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2 contract increased or went over the threshold. Then  
3 additional resources will be necessary.

4                   We went and took a look at the actual  
5 pages because we did not have the actual, you know,  
6 Web hit in the CertStat report. But we looked at  
7 the pages and determined that there's an average of  
8 eight Web hits per page view. And then we  
9 multiplied the page views, the number of page views  
10 by 2, by 8, to calculate out the number of Web hits  
11 that occurred. Some of the pages have more than  
12 eight Web hits. Some of the pages have, you know,  
13 less. But it's pretty much around eight Web hits  
14 per page.

15                   And then we took the CertStats reports  
16 and archived every single month on every single  
17 site. Because each one of the sites is tracked  
18 independently and has its own statistics for  
19 MiPagoFacil, Spanish again, and MyEasyPayment.

20                   All of those were then used to sum up  
21 and total up the total number of page views per  
22 month of the combined sites. And then that was  
23 multiplied by 8 to calculate the correct and  
24 accurate number of Web hits.

25                   Q.        By correct --

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2 A. For the month.

3 Q. -- and accurate, you mean that you used  
4 an average number to get to it?

5 A. Yes, yes.

6 Q. You said that there was an audit done  
7 of the Bank of America contract in the fall of 2009;  
8 is that correct?

9 A. Yes.

10 Q. Who was it who determined that there  
11 should be that audit?

12 A. One of the standard things that we did  
13 in this company, or actually, I think it was upon  
14 the due diligence and funding of Apollo in June  
15 2009. Did you say 2008 or 2009?

16 Q. I think you said 2009.

17 A. It was 2009, okay. Fall of 2009. So  
18 upon the part of the due diligence was to go through  
19 the contracts in detail. And, you know, Evan  
20 Pinchuk was assigned the task of reviewing each one  
21 to make sure that we are in compliance in making  
22 sure bank compliance was in compliance.

23 Q. Did Moriah Partners review the  
24 contracts of Apollo Enterprise Solutions before it  
25 entered into the funding?

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2                   A.     I believe they were furnished copies of  
3 them. I don't think that we had done an audit. I  
4 know that we didn't do an audit.

12                  Q.    Prior to the audit in fall of 2009, had  
13 Apollo Enterprise Solutions audited the agreement  
14 with Bank of America before?

15                  A.    No.

16                  Q.    Were contracts with other customers  
17 audited at the same time?

18                  A.    Yes.

19                  Q.    Were allegedly breaches found in those  
20 contracts as well?

21                  A.    I don't understand the question.

22                  Q.    One of the allegations is that Bank of  
23 America has exceeded its 170,000 Web hits a month.  
24 And that that's a breach of the contract.

25                  In doing the audits of Apollo

1 G. Christopher Imrey - September 23, 2010  
2 Enterprise Solutions, other customers, were issues  
3 found in those contracts as well?

4 A. Yes.

5 Q. In all of them?

6 A. No.

7 Q. How many were audited?

8 A. I don't recall.

9 Q. How many customers are there?

10 A. I don't know.

11 Q. Ballpark?

12 A. Six, eight.

13 Q. Were less than eight of them audited?

14 A. I don't know.

15 Q. Were less than all the audits found  
16 problems?

17 A. Repeat the question, please.

18 Q. Were all the audits that were done of  
19 their problems with the contracts for all of them?

20 A. No.

21 Q. Were there problems with the contracts  
22 for half of them?

23 A. No.

24 Q. Were there problems with the contracts  
25 for less than half of them?

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2 A. Yes.

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19 MS. MORRIS: Mr. Imrey, I'm going  
20 to ask the court reporter to mark this  
21 collection of documents as the next exhibit.

22 (Document bearing production Nos.  
23 Apollo 679 through 687 inclusive, marked  
24 Exhibit 19 for identification as of this  
25 date.)

1                   G. Christopher Imrey - September 23, 2010

2                   Q.     Do you recognize those?

3                   A.     Yes.

4                   Q.     What are they?

5                   A.     These appear to be the invoices for the  
6     accounts that were in the one of the files that was  
7     sent by Bank of America.

8                   Q.     What do you mean by files?

9                   A.     Well, one of the criteria for the  
10    recovery for settlement offers, recovery accounts  
11    that were eligible for settlement offers and  
12    eligible for different monthly payments and  
13    different options.

14                   So the Apollo system, the person logs  
15    in. Performs a decision. Determines that they're  
16    eligible to have different settlement options  
17    presented to them that were contained in a file that  
18    was sent to us by Bank of America on a monthly,  
19    monthly basis, I believe. These are the -- this  
20    is -- these are the bills for the accounts that were  
21    in those files that paid. That entered into a  
22    settlement and then made payments.